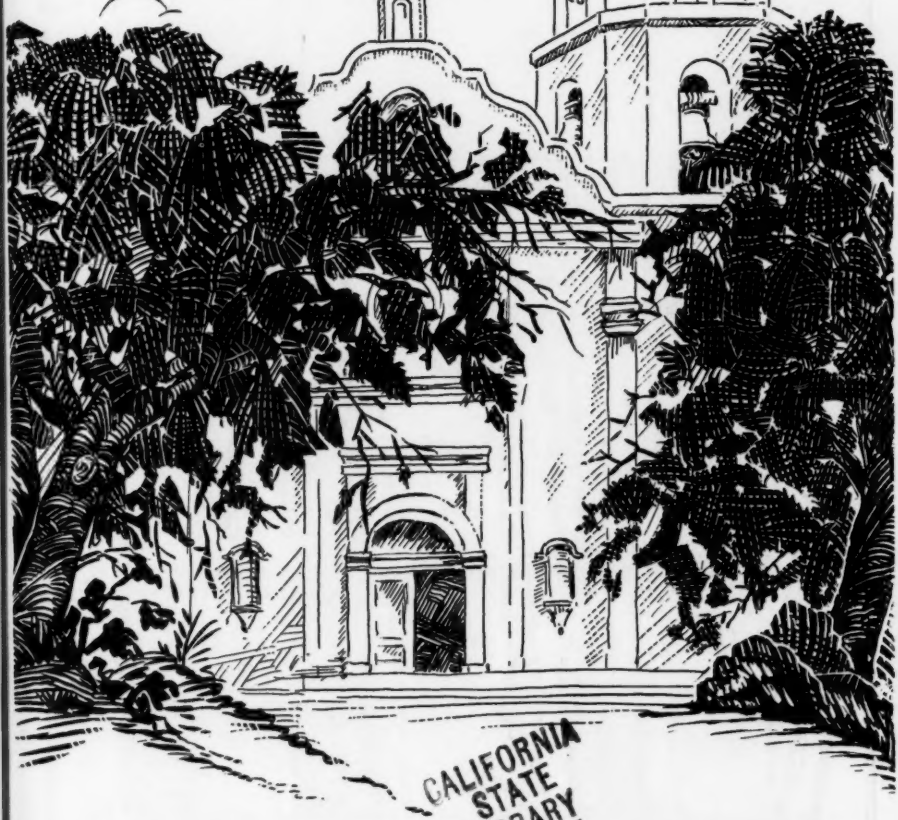
Los Angeles Bar Association

# BULLETIN





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Number 2

## OCTOBER 24—MEETING OF MEMBERS—UNIVERSITY CLUB

# *The October Monthly Dinner and Meeting Unusual Program of Entertainment*

THE program committee reports that arrangements have been closed which insure an outstanding meeting of pleasure and interest for the evening of Thursday, October 24, 1935, at the University Club.

The speaker of the evening will be Orra E. Monnette, well and favorably known to all members of the Bar. Mr. Monnette was admitted in Ohio in 1896, and in California in 1907. He is a member of the American Bar Association, State Bar of California and of the Los Angeles Bar Association. Mr. Monnette has recently returned from an extended European trip on which he spent considerable time in Italy, and he is full of the facts and fancies, and the rumors and speculations which make up the present war clouds in Europe and particularly the current military difficulties between Italy and Ethiopia. His subject will be "The Rich Jewel in Ethiope's Ear." Timely—entertaining—instructive.

We will also have the Hon. Greville Baird, son of the Baron of Stonehaven, and now a first lieutenant in His Britannic Majesty's regiment—the famous Gordon Highlanders. Lieut. Baird has had extensive service in India and other parts of the British Empire and recently spent some time in Ethiopia. His reminiscences as a British officer and of his adventures should prove intensely interesting.

Also, the Los Angeles County Employee's Orchestra will play for us—forty-five strong. This is really a remarkably fine orchestra, practically all members being ex-professional musicians, now working various capacities for the county. J. Truman FuderBurgh, clerk in Judge Blake's court, is the conductor, and E. A. Miller, who is Judge Burnell's clerk, is the manager. We are fortunate indeed to secure the services of this fine organization.

Also we intend to honor the judges of our local Federal Bench, and Mr. Gurney E. Newlin. Reverberations of the recent meeting of the American Bar Association are well known to everybody. Mr. Newlin's work as chairman of the General Committee is what made the meeting a success. We are proud to show him our appreciation.

All in all the dinner meeting of October 24th, 1935, is expected to be outstanding in all departments, and may properly be anticipated with real interest and pleasure.

# Los Angeles Bar Association Bulletin

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## *Community Chest Appeal*

BEGINNING Monday, October 21, some 18,000 unpaid workers of the Community Chest will begin their task of canvassing throughout 488 square miles of territory. The mere physical effort of covering this great area—by far the largest embraced by any of the 402 Community Chests in the United States—is a stupendous undertaking.

It is hoped that those of our people who are able to give, will lighten the labors of the Chest volunteers by making their subscriptions promptly. There is no necessity to make the subscriptions in cash. Rather, it is preferred they be in the form of pledges, payable in monthly or quarterly amounts throughout the year. As is pointed out by welfare leaders, very few persons can give in a single lump sum the amount they would like to give toward a full year's maintenance of the 95 diversified Chest agencies, each of which has an undeniable appeal.

All informed persons realize that, as was emphasized by Mrs. Franklin D. Roosevelt and Dr. Aurelia Reinhardt in their talks at Hollywood Bowl, the task of Community Chest-supported institutions and groups will be heavier during the year ahead than even during the past year. Accelerated withdrawal of the Federal Government from the field of direct relief will have the early effect of turning. over to local communities large numbers of persons who have been receiving direct Federal aid. So far as lies in their power, agencies of the Chest must help to meet this added responsibility.

Moreover, there is a wide range of services—constructive, preventive, rehabilitative and stabilizing—for which Federal funds are not and never have been available. With the accumulated scars of the long depression affecting disastrously child life and family surroundings, the demands upon Chest agencies are bound to be increasingly heavy for some time to come.

# Changes in Motor Vehicle Laws -- Driving While Intoxicated -- New Tax Measure

By J. Allen Davis, Associate Counsel, Automobile Club of Southern California

THE California Legislature in 1935, acting upon recommendations from members of the judiciary, district attorneys, representatives of motor clubs and others, made substantial change in the law relative to driving a motor vehicle while under the influence of intoxicating liquor.

Previously the California Vehicle Act, by section 112, required in every instance prosecution as for a felony but permitted the jury to recommend the punishment. Unless drunk driving resulted in a death or serious personal injury the average penalty inflicted amounted to a fine of two hundred dollars. In order to avoid the expense and difficulties of Superior Court trials many charges of reckless driving were filed in lower courts while the real offense was driving while under the influence of intoxicating liquor.

The courts, district attorneys and others recommended a change in the law in order that prosecution might be brought suitable to the gravity of the offense committed.

## New Sections

The new Vehicle Code contains two sections, 501 and 502, relative to driving under the influence of liquor.

Section 502 declares it unlawful for any person who is under the influence of intoxicating liquor to drive a vehicle upon any highway. A misdemeanor charge may be brought against any person for violation of this section. Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than thirty days, nor more than six months, or by fine of not less than fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment. Upon a second or any subsequent conviction the defendant shall be punished by imprisonment in the county jail for not less than ninety days, nor more than one year, or by a fine of not less than two hundred dollars, nor more than one thousand dollars, or by both such fine and imprisonment.

Thus the usual charge for the offense of driving under the influence of liquor will be brought in the Justices Court or Municipal Court. However, penalties of greater severity may be imposed upon conviction under section 501, which reads as follows:

**"Any person who, while under the influence of intoxicating liquor, drives a vehicle and when so driving does any act forbidden by law or neglects any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes bodily injury to any person, is guilty of a felony."**

The penalty prescribed shall be imprisonment in the state prison for not less than one year, nor more than five years, or in the county jail for not less than ninety days nor more than one year, or by fine of not less than two hundred dollars nor more than five thousand dollars, or both such fine and imprisonment.

## Court Determines Penalty

Both in respect to felony and misdemeanor convictions the court determines the penalty. The former provision authorizing the jury to recommend the punishment and which limited the authority of the court has been removed.

It will be noted that the felony charge requires proof as follows:

First, that the defendant while under the influence of intoxicating liquor drove a vehicle.

Second, that while so driving the defendant violated one or more traffic laws, or neglected a duty imposed by law in the driving of such vehicle.

Third, that such act or neglect proximately caused bodily injury to a person.

Assuming that a felony charge is brought but conviction cannot be obtained under said section question has been raised as to whether conviction might be rendered in the Superior Court upon proof of violating section 502 for a misdemeanor. Although there has not been opportunity for decision on this point it would seem probable that the answer is yes.

In the case of *ex parte Donahue,* 65 Cal. 474, the Supreme Court held that one charged in the Superior Court with the offense of assault with a deadly weapon may be convicted in that court of a simple assault, a misdemeanor, and said court has jurisdiction to pronounce judgment in imposing the punishment fixed by law for the offense of which he was convicted.

It will be noted that the Vehicle Code does not define the phrase "under the influence of intoxicating liquor." However, the courts have done so. We find the following statement in *People v. Ekstromer,* 71 Cal. App. 239 (1925):

**"If intoxicating liquor has so far affected the nervous system, brain or muscles of the driver of an automobile as to impair, to an appreciable degree, his ability to operate his car in the manner that an ordinarily prudent and cautious man in the possession of his faculties, using reasonable care, would operate or drive a similar vehicle under like conditions, then such driver is 'under the influence of intoxicating liquor' within the meaning of the statute."**

Also said decision declares that the question of whether a person is intoxicated is a question of fact to be determined by the court or jury.

We may note also that the Vehicle Code provides that upon a conviction under section 501, a felony, the operator's license of the person convicted must be revoked by the Department of Motor Vehicles. (Sec. 304.)

Upon a conviction under section 502, a misdemeanor, the defendant's operator's license may be suspended by the court for a period not exceeding six months (Sec. 292); or may be suspended or revoked by the department (Sec. 306). In fact, the department must suspend the license temporarily at least until proof of financial responsibility is given (Sec. 304-c). Upon conviction of violating section 501 no new license can be issued for a period of one year and then only upon the furnishing of proof of financial responsibility. (Sec. 304-b.)

## New Tax System

Turning to a new subject matter many inquiries have been received relative to the new state license tax imposed on motor vehicles beginning January 1, 1936.

This new measure is found in chapter 362, Statutes 1935. It imposes the license fee for the privilege of operating any vehicle in this state. This is in addition to the usual three dollars registration fee.

The annual amount of such new license fee shall be a sum equal to one and three-quarters per cent of the actual market value of the vehicle as determined by the department. The department annually shall compile and publish a list showing the market values as determined by it of each class of vehicle subject to the license fee, such vehicles being classified by make, type and year of manufacture.

The license fee is imposed upon all registered motor vehicles and such vehicles are thereby exempted from local personal property taxes. The fee will first be collected upon annual renewal in January, 1936.

It is important to note that penalty attaches thirty days after first operation of a vehicle during the calendar year. Thus, application for renewal and payment of fees should be made on or before January 30, 1936, in order to avoid any possibility of penalty. The penalty doubles the license fee.

The revenue under said act is deposited in the State Treasury, twenty-five per cent being returned to the cities, twelve and a half per cent being returned to the counties and the remainder is made available for state governmental purposes.

# Los Angeles County Law Library

By Paul R. Matthews, of the Beverly Bills Bar

IT IS generally recognized among the bench and bar that the four finest law libraries in the United States are maintained by Harvard University, the University of Michigan, the City of New York, and Los Angeles County.

The nucleus of the Los Angeles County Law Library represents a collection of books which originally belonged to the "Law Library of Los Angeles," a private corporation. This collection of books was by contract entered into between the "Board of Trustees of the Los Angeles County Law Library" and the "Law Library of Los Angeles," transferred and delivered to the county law library on the first day of June, 1891.

The Los Angeles County Law Library was organized and its Board of Trustees chosen pursuant to the act of 1891 of the California State Legislature, providing for the various county law libraries of this state. The Act and its subsequent amendments provides that the county law libraries shall be maintained from a fund created by one dollar taken from the filing fees of each complaint filed in the Superior and Municipal Courts of the county wherein the library is located. Its board of trustees is composed of the chairman of the board of supervisors of the county, two judges of the Superior Court and two attorneys who are engaged in active practice in the county.

## Branch Libraries

The Los Angeles Law Library maintains branches in Los Angeles, Long Beach, Pasadena and Pomona as well as California reports and other books in the chambers of the judges of the Superior and Municipal courts of the county. The report of the librarian for July 1st, 1935, indicates that the Los Angeles branch contains a collection of 107,000 volumes, daily subscriptions to the leading legal publications of this state and the leading law review articles of the United States and of many foreign countries. It endeavors to maintain the statutes and reported cases of the highest courts of record in all the American states and territories and of foreign countries from the time of the convening of the first sessions of the territorial legislatures.

All of the officially reported cases back to the time of the American Revolution are maintained, as well as a limited number of cases reported by private reporters. Some of these cases run back as far as 1658 in the English Reports. All of the leading English and American Digest systems and encyclopedias are contained in this collection.

## Briefs and Transcripts

One of the departments maintains briefs and transcripts of the cases before the appellate courts of this state which affords an opportunity for a research of the pleadings and evidence, as well as arguments in cases which have been ruled upon by our Appellate and Supreme Courts.

There are also many thousands of volumes covering allied legal subjects of interest to the legal profession, such as biographies of the great English and American jurists and lawyers, the recognized authorities on handwriting, sex, medical jurisprudence, trial tactics, the proceedings in all the state and United States constitutional conventions, the complete set of the Congressional Record and Globe as well as the journals and appendices of all the sessions of the California State Legislature.

The excellent library maintained by this county is largely due to the fact that Thomas W. Robinson, Esquire, of the Los Angeles Bar, has been the librarian ever since its inception. It is also of interest to note that the Honorable Paul J. McCormick, Judge of the United States District Court for the Southern District of California, when only a boy, was Mr. Robinson's assistant law librarian.

# Attorney's Lien Law Legislation

By Robert W. Kenny, Judge of the Superior Court, Los Angeles County

SINCE the day in 1850 when the Supreme Court decided (*Ex parte Kyle,* 1 Cal. 331) that they have no lien for compensation for their services, California attorneys have had no judicial aid in protecting their rights to fees, other than that given by an ordinary suit at law.

In recent years the California Legislature has consistently rejected proposals for the creation of an attorney's retaining lien by statute, such a bill being defeated again this year. Nevertheless, a significant advance was made toward the protection of contingent fee contracts during the 1935 session. Assemblyman Ben Rosenthal, of Los Angeles, obtained passage and Governor Merriam signed a bill (Chap. 560, Stats. of 1935; effective Sept. 15, 1935) amending Sec. 284 C. C. P. by adding the italicized portion:

> "284. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:
>
> "2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other, except that in all civil cases *in which the fee or compensation of the attorney is contingent upon the recovery of money, in which case the court shall determine the amount and terms of payment of the fee or compensation to be paid by the party.*"

Prior to this amendment, no matter how much money or services the attorney had expended, the client in California has always had the absolute right to substitute him out at any stage in the action (*Gage v. Atwater,* 136 Cal. 170, 172). Holders of contingent fee contracts have on many occasions (*Gage v. Atwater, supra; Todd v. Superior Court,* 181 Cal. 406; *Scott v. Superior Court,* 205 Cal. 525; *Carsetta v. Del Frute,* 116 Cal. App. 255; *O'Connell v. Superior Court,* 89 Cal. Dec. 206) vainly tried to escape from this rule on the theory that they possessed an agency coupled with an interest. Although the courts have invariably qualified the absolute privilege of a client to remove his attorney, with the statement that it only obtains "in the absence of any relation of the attorney to the subject matter of the action, other than that arising from his employment" (*Gage v. Atwater, supra*), no attorney has ever been able to bring himself within this exception in any reported case and thereby prevent his substitution. A discharged attorney with a contingent fee contract has also been prevented by our courts from intervening in an action on the ground that his interest is only in the proceeds of the action and not in the action itself. (*Kelly v. Smith,* 204 Cal. 496.) Attorneys similarly placed have protested in vain when their clients satisfied judgments (*Mansfield v. Dorland,* 2 Cal. 507) and settled out of court (*Hogan v. Black,* 66 Cal. 41). However the consent of the attorney is still necessary to a dismissal of the action (*Toy v. Haskell,* 128 Cal. 558; *Boca R. R. Co. v. Superior Court,* 150 Cal. 153), a factor of importance in the light of this amendment.

It will remain the part of future judicial construction to determine the effectiveness of the 1935 amendment in relieving attorneys from the present condition of the alw.

Certainly, the amendment will not be construed to force an unwelcome attorney upon a client. Mutual confidence being gone, no court would order a continuance of that relationship. However, the statute may well be construed to give the courts discretion to prohibit a client from proceeding with new counsel before he has reached a reasonable settlement with his former attorney. The fact that the court is given power to fix the terms of payments indicates an intent to allow wide judicial discretion in this regard. Certainly the amendment will promote greater justice to attorneys who have laid out their own money and furnished diligent services to clients who choose to discharge them upon a mere whim.

# *Junior Barristers Competition*

THE JUNIOR BARRISTERS announce the rules of their annual Legal Article Contest, which is open to all junior bar members, under thirty-five years of age and in good standing. The contest closes December 20, 1935.

The following prizes are offered:

First Prize—$50 and the Bancroft Whitney award of *Jones on Evidence,* six volumes.

Second Prize—$30 and the West Publishing Company award of *Wigmore's Panorama of the World's Legal Systems,* Deluxe Edition.

Third Prize—$20; Fourth Prize—$15; Fifth Prize—$10.

1. Participants must confine their articles to subjects of current interest to the legal profession. Awards will be based upon general excellence, authoritativeness, originality of thought, and value of the article to the particular field to which it relates.
2. First prize will be awarded the best article; second prize to the next best article, and so on.
3. Three judges will be selected by the Legal Article Competition Committee of the Junior Barristers to judge the entries and award the prizes. Decision of a majority of the judges will be final.
4. No entry fee is required and any member of the Junior Barristers under 35 years of age and in good standing may compete. Members of the Legal Article Competition Committee may not compete.
5. Articles shall not exceed 7,500 words, exclusive of citations and comment on citations in footnotes; shall be typewritten. double spaced, except quotations, which shall be single spaced and indented, and except footnotes, which shall be single spaced on 8½x11 inch paper and bound on the left side. All authorities and sources of information must be stated by citations. Acknowledgement of all quotations must be made.
6. Articles submitted must be written by the participant solely for this contest and must be participant's own original work Theses, articles and other works prepared prior to the commencement of this contest will be rejected. Each participant shall certify at the end of his article that he has complied with these rules.
7. This contest will close and original and two copies of articles must be delivered or mailed, postage fully paid, to the Junior Barristers' Legal Article Competition Committee, care of Los Angeles Bar Association, on or before midnight, December 20, 1935, and bear a postmark not later than 12 o'clock midnight, December 20, 1935, if mailed.
8. Articles submitted in this contest shall become the exclusive property of the Junior Barristers, and they may publish or cause to be published the whole or any part of all of such articles in any publication or publications, and the Junior Barristers shall have all rights of an author therein. Credit for authorship shall be given the participant or participants submitting the published articles. Articles submitted in this contest will under no circumstances be returned to participants.

JUNIOR BARRISTERS LEGAL ARTICLE COMPETITION COMMITTEE

JOHN J. FORD, *Chairman*
SHIRLEY C. WARD, JR.
JOHN C. MORROW
LUCIEN W. SHAW
ROBERT E. FORD

# *Legal Aid and the Los Angeles Bar*

**Shelden D. Elliott***

AMONG the major problems confronting the lawyers of Los Angeles, one of the most urgent, and one which has received too little constructive attention from the legal profession, is that of legal aid. With thousands of families dependent in whole or in part upon public or private charity, there are many who are in urgent need of legal advice or assistance but financially unable to purchase the services of a skilled attorney. Theoretically, the burden of gratuitously furnishing these services rests upon the legal profession itself. Actually, of course, if every worthy case for charitable legal assistance were accepted by the practicing members of the Bar, the attorneys would have little time for the handling of more remunerative cases.

The average lawyer contents himself with handling a few "charity" cases, feeling that thereby his obliagtion to the profession and the public is fulfilled. And the next client who applies for gratuitous assistance, however worthy his case may be, is turned away. Where does he go? To the Small Claims Court, to the Public Defender, to the Labor Commission or the Industrial Accident Commission, if his particular problem falls within the jurisdiction of one of these agencies. However, there remain a vast number of civil matters which are outside the scope of these more or less specialized functionaries. In a social structure as complex as ours, to allow the wrongs of an individual to go

*Director of the Southern California Legal Aid Clinic.

unredressed, or his defenses to go unasserted, because the machinery with which to redress or assert them is unavailable to one who cannot pay, is to encourage antisocial tendencies in the individual thus handicapped. Justice in all cases should be, but, alas, too often is not, a matter of right to every member of society, and not a matter of privilege—and an expensive privilege at that!

### Aid Developed

In a valiant effort to remedy this deficiency, to supply a law office where indigent persons may bring their civil problems for advice or assistance without charge, legal aid societies have developed in every large city in the United States. Here in Los Angeles the Southern California Legal Aid Clinic has been in existence since 1929.[1] Since its inception, over 13,500 needy persons have applied for legal advice or assistance. Legal services have been made available to them, where otherwise discouraged, disheartened or rebuffed, they would be left without legal recourse or protection.

Here, as in every community, the development of legal aid has required courageous endeavor. Handicapped by insufficient finances, overburdened, undermanned, legal aid organizations everywhere are striving to cope with the ever-increasing volume of legal aid work. Social service, welfare and relief agencies have been quick to recognize the utility and necessity of maintaining this type of service. To these agencies, a legal aid clinic constitutes a proper and useful adjunct in the social welfare field. It is in recognition of this functional relationship that, in many cities, legal aid societies are being supported by Community Chest funds.[2] To the extent to which they contribute to the local Community Chest, lawyers are, consciously or unconsciously assisting in part in the support and maintenance of legal aid.

### Profession Apathetic

The fact remains, however, that one of the fundamental obstacles to the proper development of legal aid has been the general apathy of the legal profession itself to the movement. Notwithstanding the fact that legal aid is a necessary part of the machinery of the Bar itself—as integral a part as are the auxiliary functions of disciplinary work, admissions, and the curbing of unlawful practice—bar groups have contented themselves with relegating this particular subject to comparative obscurity in their respective programs. Committees are appointed, sporadic reports are prepared, presented, and then forgotten or overlooked by the majority of the lawyers, to whom the term "legal aid" connotes a rather vague effort of some sort by somebody else to do something or other.

In Los Angeles, the Southern California Legal Aid Clinic has been fortunate in the support and assistance which it has received from such forward-thinking attorneys as Kimpton Ellis, Harry J. Bauer, John O'Melveny, Irving M. Walker, Lawrence Larrabee, Roy V. Reppy, Jack W. Hardy, Mrs. Dora Shaw Heffner, Mrs. Edna Covert Plummer, and others, who have served as its officers and members of its board of directors. These individuals, despite the demands of practice and public service in other fields, have found time to devote themselves generously to the development of the Legal Aid Clinic. The roster of members of the Southern California Legal Aid Clinic Association includes approximately 100 members of the Los Angeles Bar who have expressed their interest in, and support of, the Clinic. In addition, there is the gradually in-

1. For a contemporaneous discussion of the origin and early development of the Southern California Legal Aid Clinic, consult John S. Bradway, The Beginning of the Legal Aid Clinic of the University of Southern California (1929), 2 So. Calif. L. Rev. 252. Consult, also, Bradway, Work of the Legal Clinic of the University of Southern California (1928), 4 Los Angeles Bar Association Bulletin 54.

2. In 1933 the Southern California Legal Aid Clinic became a member of the Los Angeles Council of Social Agencies and the Community Chest.

creasing group of law school graduates who have become familiar with legal aid through the training and experience gained in their work as student assistants to the clinic attorneys. But all of these lawyers together comprise but a fractional part of the total membership of the Los Angeles Bar. As others learn of the Legal Aid Clinic, and are fully appraised of its aims and purposes, the nature of the services performed, and the types of matters handled by the Clinic, they not only cease to regard it with some measure of distrust, but readily accept the advantages which it offers to the legal profession.

### Types of Cases

These advantages may perhaps be best exemplified by the following illustration as one of the many and varied types of cases received at the Legal Aid Clinic. Mr. X is sued by a collection agency on an assigned claim for clothing purchased from an outfitting company. His sole income is a meagre salary of $30 per month on which he is endeavoring to support his wife and three children. He has a perfectly valid defense to the claim, namely that of full payment to the outfitting company. He owns no property, and has no funds with which to employ an attorney to present his defense for him. The practicing attorneys to whom he applies for assistance are unwilling to accept his case without a retainer. Nor has he sufficient education properly to present his defense in his own behalf. Yet, he realizes that if judgment is recovered against him, half of his slender income will be taken on execution. A member of the Bar refers Mr. X to the Legal Aid Clinic. Here he is courteously received and the facts of the case are presented to one of the Clinic attorneys. If, upon investigation, the client's statements are shown to be correct, the Clinic accepts Mr. X's case and he is given diligent and competent legal assistance. If attempts at amicable settlement with the collection agency are unavailing, and litigation is necessary, his defense is thoroughly prepared and a member of the Clinic staff of volunteer attorneys appears for him in court and presents Mr. X's case in every respect as carefully and conscientiously as though Mr. X were paying a full attorney's fee. For this service, Mr. X pays nothing but the cost of preparing and filing his answer.[3] If he were able to pay more, the case would not have been accepted by the Clinic in the first instance.

Mr. X's case is not unique. He is merely one of thousands who have been aided by the Clinic; but he is not the only one who benefits from this assistance. By making legal services available to him to protect his rights, the Legal Aid Clinic has measurably increased Mr. X's respect for, and confidence in, the legal profession as a whole. By providing a law office to which Mr. X may be referred, the Clinic enables the practicing attorney to be relieved of the burden of representing Mr. X without compensation. The volunteer attorney, serving as a member of the Clinic staff, gains valuable trial experience and the reward which comes from realization of a public duty well performed. The law student who, in the capacity of law clerk, assists the attorney in preparing Mr. X's case, acquires practical training in law and procedure, in dealing with an actual client and an actual case.[4]

The above enumeration of advantages is by no means all-inclusive, but it should suffice to indicate that the Legal Aid Clinic is a real and tangible asset to the lawyers of Los Angeles. It is to be hoped that, as the members of the Bar generally come to a realization of this fact, they will find time to interest themselves in its development.

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3. Occasionally the item of court costs itself presents an insurmountable obstacle to Legal Aid Clinic clients. Wherever possible the client is required to furnish such costs, proceedings in *forma pauperis* being resorted to only in extreme cases. Statistics show that of a total of 12,000 cases received at the Legal Aid Clinic, in 136 no relief could be obtained because of the clients' inability to furnish the necessary court costs.

4. On the subject of the Legal Aid Clinic in the field of legal education, consult Leon T. David, The Clinical Lawyer-School: The Clinic (1934), 83 Univ. Pa. L. Rev. 1; John S. Bradway, Legal Aid Clinic as a Law School Course (1930), 3 So. Cal. L. Rev. 320.

# Unauthorized Practice News

THROUGHOUT the nation a concerted movement to suppress unauthorized practice of law by lay persons and organizations has been carried on with encouraging results the past few months.

In the state of Rhode Island the bar association committee on illegal practice petitioned the state supreme court to adjudge in contempt four lay persons and an attorney who were conducting an automobile service association.

The bar committee charged that the association performed and held itself out to perform services to its members which included the furnishing of counsel free in case of criminal prosecution arising from the operation of a member's automobile, and also free counsel service in damage cases.

In holding the five respondents in contempt, the high court stated, in part: "While a proceeding to adjudge in contempt for unauthorized practice of the law does not appear to have been brought heretofore in this state, we are nevertheless satisfied that it is a proper proceeding. It has been employed in other jurisdictions, under similar circumstances, and approved. Great and irreparable injury can come to the people, and the proper administration of justice can be prevented, by the unwarranted intrusion of unauthorized and unskilled persons into the practice of law. The bar is an important element of our judicial system and all of its members are obligated to govern their professional conduct in full accord with the solemn responsibility which that entails."

At Akron, Ohio, a group of attorneys, in behalf of themselves and others, petitioned the Court of Common Pleas to order an investigation to be conducted by the court, into the unauthorized practice of law in Summit county.

In Cleveland, Ohio, the bar committee on unauthorized practice, after numerous conferences, formulated an agreement with the Cleveland Hospital Council whereby the latter organization must discontinue certain objectionable practices in the collection of bills for the hospitals belonging to the council. Prior to the agreement, the council employed an attorney on a salary to do collection work. Accounts were forwarded from the hospitals to the council, and failure to collect was followed by suits filed by the organization's salaried lawyer.

An action was instituted in Massachusetts by the Middlesex Bar Association president to restrain one W. A. Graustein from practicing law, and to have him adjudged in contempt of court. It was alleged that Graustein for more than twenty years practiced as an attorney in fact before all of the courts of the state, his only authority being a written power of attorney filed with the court.

A demurrer to the bill was filed by Graustein, but his objections were overruled and the matter set down for trial.

## CORRECTION

**THE article on Legislative Changes in the Probate Code which appeared in the September issue of the Bulletin contained an error through the omission on page 12 of the correct paragraph under the heading of "Instruction by the Court"; and the heading to the paragraph respecting the provision requiring an extra copy of the inventory to be filed. As corrected, the paragraphs should read: Instructions by the Court.**

**Section 588, a new section, gives the court power to instruct an executor or administrator on the administration of the estate and its management. Inventory.**

**Section 600 has been amended to require an extra copy of the inventory of each estate to be filed with the County Clerk to be sent by the County Clerk to the County Assessor.**

**Section 1535 should be 1533. Typographical error.**

# Huntington Library Invites Bar to Special Exhibition of Rare Legal Manuscripts and Books

THE Board of Trustees has accepted on behalf of the members of the Los Angeles Bar Association and affiliated bar associations an invitation from the Henry E. Huntington Library and Art Gallery, to visit the Library on the afternoon of Friday, November 8, 1935, upon which occasion rare legal manuscripts and printed books of particular interest to attorneys will be exhibited.

The reception and exhibition will be from 1:00 to 4:30 o'clock P. M.

Weather permitting, a very short program will be given under the oak trees with tea at 4:00 o'clock P. M.

ADMISSION BY CARD ONLY

**Admission will be by card only. You may secure cards from the office of the Los Angeles Bar Association, 1124 Rowan Building, the Law Library, 700 Hall of Records, or from the Huntington Library, San Marino, California.**

Ladies are most cordially invited to attend the reception and exhibition.

This exhibition of legal documents,—manuscripts, books issued by the first presses of Germany, England, and the United States, and first editions of some of the English Classics of the law—has been selected from a large number of similar items in the collections of the Huntington Library.

Many of the manuscripts and early English printed books were part of the Bridgewater Library (founded by Sir Thomas Egerton, later Baron Ellesmere and Viscount Brackley, Lord Keeper of the Great Seal in the reign of Elizabeth, and Lord High Chancellor of England under James I), purchased by Mr. Huntington in 1917.

Those attending will see among other rare treasures the following:

JUSTINIAN I (483-565). CODEX CONSTITUTIONUM. Mainz: Peter Schoeffer, 1475. Mandate, dated 1203, from King John to his chief justice of the forests, with portion of the royal seal.

GLANVILLE, RANULF DE (1130-90). TRACTATVS DE LEGIBVS ET CONSVETVDINIBVS REGNI ANGLIAE . . . London: Richard Totell (1555?). This first classical text-book of English law was completed by 1189. Glanville's kinsman and secretary, Hubert Walter, may have been the author. The treatise describes the procedure of the king's court, and reflects vividly the importance of land law and of legal procedure in medieval England.

BRACTON, HENRY DE (d. 1268). DE LEGIBVS & CONSVETVDINIBVS ANGLIAE . . . London: Richard Tottell, 1569. Latin text. Bracton's work was the first attempt to treat the whole range of the law in a manner at once systematic and practical, and was the most important institutional work for almost 350 years—until Coke's *Institutes*.

LITTLETON, SIR THOMAS (d. 1481). TENORES NOVELLI. London: Richard Pynson (1496). Text in law French. Littleton, judge and earliest known reader to the Inner Temple, wrote the *Tenures* primarily for the instruction of his son, Richard. The book is a brief scientific account of the development of what was then the most important branch of the law, and it soon became an authority.

PENNSYLVANIA. THE FRAME OF THE GOVERNMENT OF THE PROVINCE OF PENNSYLVANIA IN AMERICA: Together with certain Laws Agreed upon in England by the Governour and Divers Free-Men of the aforesaid Province . . . 1682.

MASSACHUSETTS. THE BOOK OF THE GENERAL LAUUES AND LIBERTYS CONCERNING THE INHABITANTS OF THE MASSACHUSETS . . . Cambridge: Printed according to order of the General Court, to be solde at the shop of Hezekiah Usher in Boston, 1648.

# Woman Lawyer Chides Junior Barristers

Editor, Los Angeles Bar Association Bulletin

In Mr. Sharritt's well-written article "Junior Unit Within the State Bar" in the September issue of the BULLETIN appears the following:

"Several cities in California now have junior organizations within the Bar Association of the city. The largest of these is the Junior Barristers of the Los Angeles Bar Association. . . ."

The quoted statements are undoubtedly true but they lead to some rather amazing conclusions.

Do you recall the form of the Socratic syllogism? It goes like this:

**"All men are mortal; Socrates was a man; therefore Socrates was mortal."**

Throughout Mr. Sharritt's article, he ignores the fact that the Junior Barristers and similar organizations are for men only. Not that I have any quarrel with the organizations, but I do object to the implied assumption that all of the younger attorneys are men. We have a syllogism that goes something like this:

**"All the younger attorneys are men; X is one of the younger attorneys; therefore, X is a man."**

Or, putting it another way:

**"Only men are members of junior bar organizations; Y is not a man; therefore, Y is not a member of a junior bar organization."**

Of course, Mr. Sharritt did not mean any such conclusion but I feel that it is time that implied assumptions of the kind I have pointed out end. When the Junior Barristers were organized, it was organized for the younger men attorneys. Ultimately, the younger women attorneys, feeling that they would benefit as much as the men from an organization composed of younger attorneys and being automatically excluded from the Junior Barristers, formed the Women's Junior Committee of the Los Angeles Bar Association.

The Women's Junior Committee is similar in form and general set-up to the Junior Barristers with the possible exception that it may be more serious in purpose. This committee, presided over by Dr. Wendy Stewart for the past two years, has been "highly successful in operation," as Mr. Sharritt says of the Junior Barristers.

I have watched the activities of the Women's Junior Committee for the past two years, both as a member of the body and as an interested on-looker, and I honestly do not know of another group of lawyers in Los Angeles which is more active both subjectively and objectively.

As I have pointed out above, I have no quarrel with the Junior Barristers; it is only that I think that the time has come when the bar should cease to ignore activities of women lawyers. The Women's Junior Committee, without fanfare or publicity, is doing a remarkable piece of work.

It should not be assumed from anything which I have said that I hold an especial brief for organizations of women lawyers, for I do not. Although I am a member, and past officer, of a group composed entirely of women lawyers, my own feeling is and always has been that a lawyer is a lawyer, be he a man or a woman and that organizations, such as the Los Angeles Bar Association, which is composed of lawyers, regardless of their sex, is the best form of bar association. Within the main organization, subdivisions or committees composed exclusively of men or of women may be proper, but when there are such subdivisions, it is neither right nor fair to refer only to the men's groups and ignore the women's.

Very truly yours,

AUGUSTA ROSENBERG.

# Leaves from a Judge's Notebook

## A Miscellany of Ideas Born of the Day's Work

By William J. Palmer, Judge of the Superior Court

This is the second of a series of articles by Judge Palmer, first of which was printed in the July issue of The Bulletin.

III. *Court room visitors judge lawyers and court.*

THE time may come when one will be required to be something of a master of his own language to be admitted to the bar. At present the occasionally but too frequently, slovenly use of English in court is disappointing. It would be well if lawyers, clerk and judge should take note of the fact that at any time someone might be in the court room appraising the whole legal profession and the judicial branch of the government by what he there sees and hears.

A cultured physician, who told me that he had testified recently in one of our criminal trial departments, expressed much surprise and disappointment resulting from his experience. He commented particularly on the boorish manners of one of the attorneys and, among other things, described in detail the awkward way in which counsel sprawled in his chair.

A young man recently out of college, product of a good home, expressed similar thoughts, but in his case the surprise arose from the poor command of English and the weak, ineffective speaking of counsel. He said that he always had thought that it required much more training and much force of intellect to be a lawyer.

While listening to an argument to a jury one day, my reporter counted more than forty instances in which the speaker began a sentence, then lost himself in the by-paths of parenthetical remarks and never finished the sentence begun.

It is regrettable that exceptional instances such as I have mentioned must lead to the misjudging of a profession that has contributed far more than its share of scholarly, cultured and brilliant men to the business, civic and social life of the community.

Some day, perhaps, we shall give a second examination to those lawyers who wish to practice in the courts and require of them a showing of proficiency in such subjects as English, enunciation, court room etiquette and evidence.

IV. *Words.*

Our state has a beautiful name, and it is a pleasure to hear it said whenever there is an opportunity for its use in a natural and unboastful way. Lawyers have such an opportunity when citing decisions of our appellate courts. I do not know of any volume of reports entitled "Kal" or "Kal App," but I hear frequent reference to them. Would it not be much more satisfying and more respectful of our state to say "California Reports" or "California Appellate Reports"? This word "California," as full of charm as the state itself, is so musical that we should practice using it at every proper opportunity.

A word rather frequently misused in legal argument—and occasionally in opinions of higher courts—is the word "predicate." We are told that an argument is predicated on a false assumption. Perhaps the simple and proper word "based" or the other proper word "founded" does not sound sufficiently learned. The specific meaning of the word "predicate" is "to assert to be a quality, attribute or property of." To predicate perspicacity of a lawyer is to attribute that quality of mind to him.

Another old friend in the law is the word "proven," used as the past participle of the word "prove." The form is archaic and should be discarded in

favor of the proper word "proved." "The plaintiff has proved his case" would be not only a welcomed, but a grammatical, statement for a judge to make upon the conclusion of a trial.

I have learned from the occasional reading of pleadings in personal injury cases that the world is quite well supplied with noble persons, persons who do not yield to misfortune, but stand up under it and carry it with inspired fortitude, for in the complaint in nearly every such action, it is alleged that the plaintiff has "sustained" numerous injuries including, of course, concussion of the brain and great nervous shock. My admiration, however, is somewhat tempered by the suspicion that the pleader would have expressed his thought more accurately if he had used the word "suffered" or "incurred" rather than the word "sustained."

Is it not possible that in the drafting of contracts and other legal documents the use of several words where one should be sufficient, thus to make certain that the right word is included among the several, is an unworkmanlike substitute for the thoughtful skill that would choose and use only the right word? In the preamble of a contract, is it necessary to say more than simply that the contract is "entered into by" John Doe and Richard Roe? Is anything gained by the use of the longer phrase, "made and entered into by and between"? In drafting a complaint in an action with only one plaintiff, why not throughout the complaint refer simply to "plaintiff" rather than to "the aforesaid plaintiff" or "said plaintiff" or "the aforesaid plaintiff Henry Smith"? In pleadings and other documents filed among the papers of a case, why not refer simply "to this action" rather than use so often the threadbare phrase "the above-entitled action"? By omitting all excess and dull verbiage that has become attached to our venerable thought patterns, we could develop, I think, a more readable style of legal literature.

Let me conclude this little chapter with the assurance that nothing said in it, or in the one preceding, has been said in a captious spirit, and, confessing my own shortcomings, let me admit need of heeding the suggestions myself.

V. *The lawyers' conjunction.*

My esteemed friend and associate, Judge Bogue, it seems, does not approve of the hybrid, double-action conjunction "and/or." I had not suspected before that the courageous and high-minded judge had so much of an artist's soul. I admire him the more, although my views in this respect are sharply at issue with his. It is not often in life that the decisions we must make require us simply to choose between the perfect on the one hand and the wholly wrong on the other, between the all-good and the all-bad. More often than not, we are obliged to choose between that which is only partly good and something else that is only partly bad. While there is nothing artistically attractive in the device "and/or", personally I would rather see it used than to wade through the uninteresting phraseology that otherwise must be used in drafting a technically accurate answer to an involved complaint. Of course, those who are satisfied with general denials never should have any use of "and/or." Also it may be said that the hybrid conjunction can be abused. It may be used incorrectly, too, by an unskillful draftsman. We must not judge its great utilitarian value by its misuse.

In making affirmative allegations there seldom should be need for using "and/or," but when we must answer an extensive complaint the double-jointed conjunction has a practical value that, to me, greatly outweighs its faults.

No automobile has the beauty, dignity or "poetry of motion" of a Napoleonic carriage drawn by high-spirited horses, but today we feel that we must "go places" and the device "and/or" is just another little gadget aiding our pursuit, certainly no more mechanical and no less poetical than numerous other gadets in our daily service.

While doing some general reading recently, I came upon a well written magazine article that had nothing to do wtih the law, apparently the work of an able

writer, and I found "and/or" used by the author in one instance. The device has come to stay because it serves a useful purpose.

VI. *Court room architecture.*

Probably there is little, if any, chance of improvement, except ornamentally, in the design of court rooms that are to be used for jury trials. But it seems to me that we could make some advance in the architecture of the court room to be used for trials without juries, with the end of designing our fixtures so as to promote greater working efficiency and not for show or for presenting a show.

The weakness of our present arrangement lies in the fact that of the three persons who desire to be, and should be, in the direct line of the witness' vision and sound of voice, only two—counsel and reporter—can be accommodated. The judge, who after all, plays a role of some importance in the trial, must be content with a profile of the witness, often partially, and sometimes entirely, obscured by the tilted, attractive hat of a feminine witness, and with receiving the sound of the voice only as it ripples away at right angles from the line of propulsion.

I am suggesting in rather an off-hand way, for further thought on the part of others as well as myself, a design that, while favoring the reporter as at present, provides at all times not only counsel, but the judge, with a full-face view of the witness, and places the judge within a narrower angle of vocal range in relation to the witness than he occupies in our present local court room design.

VII. *Women on the jury.*

Nearly all women who serve on our local juries come from that stratum of society which, for want of a better name, we call our middle class—the same class to which nearly all judges and lawyers belong. Whatever their varying

individual intellectual attainments, as a class they represent a very fine development of spirit. In this respect, they excel the women of any other social stratum in our own country, and, in my opinion, admitting individual exceptions, are definitely among an advanced group in life's slow process of spiritual unfoldment.

Women are much more alert and clever than men in appraising the qualities of another woman and, although they may not be aware of it, they favor that other woman if she is very much like themselves, neat, not ostentatiously dressed, modest, unaffected and immaculate.

If you represent a woman client, do not allow her to think that she will arouse an effective sympathy in women jurors by appearing in court in worn, unattractive clothes and presenting generally a picture of forlornness and tearful misfortune. No matter how sad her story may be or how poverty-stricken she is, bring her into court an exemplification of tidiness. The women jurors will observe not only the cleanliness and modishness of her dress, but will observe and take note, consciously or unconsciously, of her shoes, hosiery, coiffure and all the manifest effects of her own attention to her appearance. Finding such details to their liking, women jurors will admire the witness for the unyielding manner in which she has *sustained* her injuries, and with women jurors, the winning of admiration is not to be wholly ignored in favor of an effort to invite sympathy.

Another extreme to be avoided with women jurors and a woman client is the appearance that the client belongs, or thinks she belongs, to a social class above that of the jurors and others in the court room. To be extravagantly dressed, to "put on airs," to give the impression that she has an aversion to the court room contact with common folk—in short to be "doggy" or a snob, is as certain a handicap to a woman litigant in a case being tried before women jurors as going to the other extreme of being the miserable and unkempt victim of misfortune.

In a recent jury case, the plaintiff was a woman and her case was one with a powerful sympathy appeal. Nine women and three men composed the jury. Two of the three men voted for the plaintiff. Eight of the nine women and one man voted for the defendants who were men. The verdict, I think, was technically sound, but that fact does not fully explain it.

VIII. *When to cross-examine.*

One hesitates to say anything to encourage more cross-examination than we now are accustomed to hear, but the incident I am about to relate is worthy of thought and should, I feel, be passed on to the profession.

In a personal injury case recently tried before a jury, after the defendant concluded his direct testimony, counsel for plaintiff said "no cross-examination," and the witness was dismissed without cross-examination. From my viewpoint, no cross-examination was necessary and I thought counsel showed good judgment in allowing matters to remain exactly as the witness left them. After a brief period of deliberation, the jury brought in a verdict for the defendant. From a conversation heard by the clerk after the jury had been discharged and from statements of one of the jurors whom I later met in the hall, I learned that the failure of plaintiff's counsel to cross-examine the defendant had effected a very significant influence on the jurors. They had reasoned among themselves that counsel must have been "afraid" to cross-examine the defendant, that he must have feared what would have come forth from such cross-examination. To them, it was a sign of weakness. There were six men on that jury, all appearing to be above the average in intelligence and judgment.

I do not mean to express disagreement with the verdict, but merely my interest in the reasoning that apparently played a considerable part in producing the decision, and I leave with the reader the question as to whether or not there is any moral in the story.

IX. *A way to save time and to have better instructions.*

If a committee of lawyers and a few judges would cooperate in assembling a collection of approved jury instructions of a character frequently used in the various kinds of cases commonly tried in our local courts, and we could have sets of them printed or mimeographed, bound in detachable covers so as to permit of expansion, and each instruction would be numbered, a vast amount of time could be saved for lawyers and a good deal for the court.

Counsel then simply could ask the court to give instructions numbered one, seven, ten, and so on, and thus many of the instructions would be provided. It would not be necessary to make typewritten copies for the particular case unless an appeal were taken. The judge would not need to study them, being already familiar with them and knowing that they contained no "jokers" or other errors or shortcomings. Thus both counsel and judge could concentrate their time and energy on the instructions necessarily prepared especially to fit the requirements of the particular case.

X. *This would be an appreciated courtesy.*

At the beginning of a trial, the trial lawyer could show the reporter, clerk and judge a courtesy that would be deeply appreciated by handing to each a typewritten list of the names of witnesses he expects to call, of those technical terms and words used only in the jargon of a particular class, profession or trade, that he expects will be used in the testimony, and of the proper nouns, not commonly used or known, that will be mentioned.

This service would be especially helpful to the reporter, whose labors, even with all the little aids we can give him, requires the most exacting application, a high degree of intelligence, and consummate skill. He must be the most consistently proficient workman in the court room. Frequently working against obstacles resulting from the high tension and nervous temperaments of participants, rapid-fire speaking, careless enunciation, foreign accents and inarticulate witnesses, the achievements of our reporters invite profound admiration.

XI. *To clarify and simplify the law is to strengthen and uphold it.*

What will be the ultimate result from the torrential flow of opinions coming from our District Court of Appeal? Will the law be built up, clarified and reconciled, or will it be lost—lost like the needle in a haystack of facts, many of which are as common and uninteresting as a list of delinquent taxes? Or will it be destroyed by the uncorrelated and sometimes conflicting deliberations and writings of the several independent courts, each lending its own inflections, giving its own twists and turns, adding its own "ifs," exceptions and variations.

I cannot see any basic justification for the maintenance in one state of so many independent courts of appellate rank. We need all the justices, of course, to do the work, but they should be organized in one Supreme Court of the state, headed by a few of the best legally-trained minds obtainable, and a few of the men at the top should give all their time to these four duties: 1. Organizing and assigning the work. 2. Reading and approving or disapproving every opinion written by another justice before its release. 3. Deciding, before its release, whether the opinion makes any contribution of the law and if in their judgment it does not ordering either another and different opinion or *the issuance of a decision without opinion.* 4. Writing occasional opinions that would have nothing to do with any pending case, but merely to indicate a reconciliation of past conflicting opinions where reconciliation is possible or if not possible, to indicate the present view of the court as to what is the better law, thus to guide lawyers and lower courts and thus to save expensive appeals and long delays. These valuable expressions could be made on the court's own motion and either at its own suggestion or upon the suggestion of any member of the bar.

# Stare Decisis Freed From Baneful Effect

AN interesting article, written by Mr. Harley, summarizes a longer article in the Illinois Law Review for April, 1935 (Vol. 29, No. 8) entitled "Renovation of the Common Law Through Stare Decisis," by Professor Albert Kocourek and Mr. Harold Koven.

The gist of this article is the suggestion that while accrued rights require the application of established rules of law, notwithstanding, a court of last resort is at liberty to state the correct rule for application to cases subsequently arising. Mr. Harley says: "The doctrine of stare decisis is inevitable for the purpose intended—to stabilize the law. Change is just as inevitable. Adherence to precedent, and adoption of better rules for future transactions, are in nowise inconsistent. It is only by this understanding of the doctrine that justice can be done under an anachronistic or erroneous rule and its evil consequences averted for the future."

The Supreme Court of the United States followed this principle in the case of the *Great Northern Railway Company v. Sunburst Company*, 287 U. S. 358. —*(19 Jour. Am. Jud. Soc. 37.)*

### Criminal Law Enforcement and Procedure

"Illinois Presented With New Criminal Code," 19 Jour. Am. Jud. Soc. 61, Aug. 1935.

"Report of Committee on the Administration of Justice," 10 Cal. S. B. Jour. 5, Sept. 1935.

"Report of Public Defender of Los Angeles County," 10 Cal. S. B. Jour. 36, Sept. 1935.

"Criminal Justice," Guy E. McGaughey, 24 Ill. Bar. Jour. 8, Sept. 1935.

"Report of Committee on Criminal Law," 8 Bul. S. B. A. Wis. 170, Aug. 1935.

"Crime Suppression," address by Hon. Robert S. Cowie, 8 Bul. S. B. A. Wis. 172, Aug. 1935.

### Legal Education

"Report of Committee for Cooperation Between the Law Schools and the State Bar," 10 Cal. S. B. Jour. 21, Sept. 1935.

"Address," Robert L. Munger, 9 Conn. B. Jour. 206, July, 1935.

"The Bar Examination in Retrospect and Prospect," Dean Roscoe Pound, 4 The Bar Examiner 455, Sept., 1935.

### Judicial Selection

"California's Crusade for Selection Reform," 10 Jour. Am. Jud. Soc. 50, Aug., 1935.

"Judiciary Committee Recommends Appointing Bench," 3 Detroit B. Quart. 18, July, 1935.

"Re Judicial Appointment," 3 Ohio L. Rep. 271, Aug. 26, 1935.

"The Respondent Objects," E. Guy Hammond, 3 Ohio L. Rep. 273, Aug. 26, 1935.

"Tentative Draft of Constitutional Amendment for Appointive Judges," 8 Ohio Bar 311, Sept. 16, 1935.

"Washington Bar's Plan Described," 19 Jour. Am. Jud. Soc. 52, Aug. 1935.

"Selection of Judges in New York City," 19 Jour. Am. Jud. Soc. 53, Aug., 1935.

### Profesional Ethics

"Ambulance Chasing," John E. Biby, 10 L. A. B. A. Bul. 290, Aug., 1935.

UNAUTHORIZED PRACTICE

"St. Louis Public Service Company Removes Signs Relative to Ambulance Chasers," 6 Mo. B. Jour. 139, Sept., 1935.

"Collection and Adjustment Agencies Mobilize for Battle in Missouri," 6 Mo. B. Jour. 149, Sept., 1935.

"Lay Collection Agencies Heard by Advisory Committee," 6 Mo. B. Jour. 151, Sept., 1935.

"Bar Investigates Insurance Adjustment Agencies," 6 Mo. B. Jour. 159, Sept., 1935.

Report of Committee, 8 Bul. S. B. A. Wis. 175, Aug. 1935.

# *Problems of Restatement*

## THE PRIVILEGE OF POLITICAL DISCUSSION*

EXTENDED discussion was aroused at the recent Torts conference of the American Law Institute, over the privilege of political discussion of public officers and candidates for office. There is a distinct split of authority, both sides of which are championed by reputable courts, as to whether the principle of fair comment upon a matter of public interest extends to and affords a protection against liability for defamation for the false allegations of facts which besmirch the character of such persons. The cases are in agreement that, if the facts are truly stated, the expression of a disparaging opinion, if it is an honest one, is conditionally privileged, so long as it pertains to the public conduct of an officer or to the qualifications of such person or a candidate for such an office. An illustration will show the application of the rule: A published an article in a newspaper, criticizing the method of construction of certain sewers in X, declaring that there were many indications of incompetence in the performance of the work. B, the public official in charge of the construction, sues A for libel. A's remarks are privileged if they represent his honest judgment. If this condition exists, the fact that the sewers were well and competently constructed, does not defeat the immunity.

The desirability of such protection in a democracy is obvious. Public servants are accountable to the public. Even the most conscientious and scrupulously honest public officer must expect criticism. Moreover, he must expect his public life to be appraised by persons whose judgment does not conform to sound critical standards. Therefore, he knows or should know that he will be misunderstood and subjected to disparagement which is undeserved. Those who contend for political preferment cannot be thin skinned. The most that can be expected is that opinion not be misrepresented, that is, that it be a sincere expression of the critic's actual view.

Many courts, however, distinguished sharply between the expression of opinion upon facts truly stated and the misrepresentation of facts, however honestly made, the former being privileged, the latter not. This view was upheld by Judge Taft in the Circuit Court of Appeals on the grounds that "The danger that honorable and worthy men may be driven from politics and public life by allowing too great latitude in attacks upon their characters outweighs any benefit that might occasionally accrue to the public from charges of corruption that are true in fact, but are incapable of legal proof." On the other hand, the opposite view is championed by the Supreme Court of Kansas and has been followed in a number of western states. A recent Kansas case, *Majors v. Seaton*, 46 P. 34 (1935), reiterates the view of the court expressed in *Coleman v. MacLennan*, 78 Kan. 711 (1908).

* Furnished by A. B. A. office, Chicago.

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